

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Tap House Real Estate, LLC,
individually and on behalf of the
putative class,

Plaintiff,

v.

City of Rochester,

Defendant.

Case No. 55-CV-22-1019

**NOTICE OF REMOVAL
TO FEDERAL COURT**

TO: Clerk of Court, United States District Court for the District of Minnesota, and Plaintiff Tap House Real Estate, LLC, individually and on behalf of the putative class through their attorneys, Andrew L. Davick, Konstandinos Nicklow, Anthony J. Nemo, Meshbesh & Spence, Ltd., 2519 Commerce Drive NW, Suite 120, Rochester, MN 55901.

Defendant City of Rochester (“the City”) for its Notice of Removal to Federal Court (“Notice”), respectfully states:

1. On February 4, 2022, Plaintiff commenced this suit in Olmsted County (Minnesota) District Court by serving the City with the summons and complaint. On February 15, Plaintiff filed the following documents with the state district court: (1) the complaint and exhibits thereto, (2) the summons, (3) an affidavit of service purporting to show personal service on the City’s Mayor on February 5, 2022, and (4) an affidavit of service purporting to show personal

service on the City Clerk on February 5, 2022.¹ The case, titled *Tap House Real Estate, LLC v. City of Rochester*, was assigned Case No. 55-CV-22-1019 (“the State Court Action”). True and correct copies of Plaintiff’s February 15, 2022 filings in the State Court Action are attached as Exhibits 1 through 4.

2. The next day, February 16, 2022, John Baker and Katherine Swenson of Greene Espel PLLP filed and served a Notice of Appearance as counsel for the City in the State Court Action. A true and correct copy of the notice of appearance is attached as Exhibit 5.

3. Earlier today (February 25, 2022), the state court issued a notice of case filing in the State Court Action. A true and correct copy of that document is attached as Exhibit 6.

4. Also today, the City filed and served its answer, a true and correct copy of which is attached as Exhibit 7.

Timeliness of Removal

5. Notice of removal of a civil action shall be filed within 30 days after the receipt by the defendant of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. 28 U.S.C. § 1446(b)(1).

¹ The affidavits of service contain a typo; February 5, 2022, was a Saturday. The City was served on Friday, February 4, 2022.

6. Here, the City was served with the summons and complaint on February 4, 2022, and is filing this notice of removal on February 25, 2022, well within the 30-day requirement.

Removal Based on Federal Question

7. This Court has original federal-question jurisdiction over this action, and it may be removed to this Court pursuant to 28 U.S.C. § 1441.

8. Specifically, this case arises involves a question of whether the City deprived Plaintiff of its federal civil rights by committing a regulatory taking within the meaning of the Fifth Amendment to the United States Constitution. *See, e.g.*, Exhibit 1 (Compl. ¶¶ 31, 41-44).

9. The City denies that Plaintiff is entitled to any recovery in this action, by filing this Notice, the City does not waive any defenses that may otherwise be available to it.

10. Concurrently with the filing of this Notice of Removal, the City will file in the State Court Action, and serve on Plaintiff, a Notice of Filing of Notice of Removal, as required by 28 U.S.C. § 1446(d). A true and correct copy of Defendant's Notice of Filing of Notice of Removal is attached as Exhibit 8.

11. For the foregoing reasons, this action is a civil action which may be removed by the City to this Court pursuant to 28 U.S.C. § 1441(a).

WHEREFORE, Defendant City of Rochester requests that this case proceed in this Court as an action properly removed to this Court.

Dated: February 25, 2022

GREENE ESPEL PLLP

s/ John M. Baker

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